IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 742 of 1984

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VINUBHAI PRABHUDAS PATEL

Versus

DINESHCHANDRA HARSHADBHAI PATEL

Appearance:

1. Civil Revision Application No. 742 of 1984

MR DF AMIN for Petitioners Nos. 1-2

MR PRASHANT G DESAI for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/09/2002

ORAL JUDGEMENT

1. This Revision Application under Section 29(2) of

the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act') has been preferred against the judgment and order dated 22nd March, 1984 passed by the learned Assistant Judge, Nadiad in Civil Appeal No.128/1983. The petitioners before this Court are the defendants - respondents (hereinafter referred to as 'the defendants').

2. The respondent herein (hereinafter referred to as 'the plaintiff') instituted Regular Civil Suit No.370/1979 in the Court of Civil Judge (J.D.), Nadiad against the defendants. The plaintiff claimed that the plaintiff was the owner of the suit premises i.e. the ground floor of a residential house; that the suit premises was given to the defendants on a monthly rent of Rs.220=00; that the defendants were in arrears of rent for more than 18 months. The plaintiff, therefore, gave suit notice dated 3rd July, 1979, terminated the tenancy of the defendants and demanded a sum of Rs.3,960=0 towards the arrears of rent for the period from 15th December, 1977 till 14th June, 1979. The plaintiff, inter alia, demanded a sum of Rs.435=00 towards the taxes. The said notice (Ex.31) was replied to by the defendants on 1st August, 1979. The defendants denied the allegation made in the suit notice and also raised dispute as to the standard rent of the suit premises. However, the defendants did not make any application before the concerned Court for fixation of standard rent as envisaged in Section 11(3) of the Rent Act. The defendants also contested the suit by filing their written statement (Ex.12). In the written statement also, the defendants raised the dispute as regards the standard rent of the suit premises.

3. Pending the suit, on 3rd January, 1980, the defendants moved application Ex.15 for fixation of interim rent under Section 11(4) of the Rent Act. On the said application Ex.15, the Court, on 12th February, 1980, made order as under :

> "Rent of Rs.200=00 is fixed as an interim rent per month. Defendant to deposit all the arrears of rent in the Court within one week and thereafter he should deposit the rent regularly till the final disposal of the suit. In case defendant will not deposit the rent in the Court then he should not defend the suit without the permission of the Court."

It appears that pending the suit, on 21st November, 1979, the defendants had deposited a sum of Rs.4,935=00 towards

the arrears of rent and taxes demanded. After the above order was made, the defendants deposited a further sum of Rs.1,600=00 on 17th February, 1980. The next deposit of a sum of Rs.6,225=00 was made on 19th December, 1981. Admittedly, the defendants had made a default in payment of interim rent fixed by the trial Court for some 16 months. Feeling aggrieved, the plaintiff, on 8th December, 1981, moved application Ex.18 for striking off defence of the defendants. In answer to the said application, the defendants deposited a sum of Rs.6,225=00 on 19th December, 1981. In view of the said deposit made by the defendants the above referred application Ex.18 was disposed of on 17th February, 1982. Thus, though the defendants had not made payment of interim rent regularly every month had, before the date of framing of issues i.e. 7th July, 1982, deposited in all a sum of Rs.12,760=00, which was, at the rate of interim rent of RS.200=00 fixed by the Court, sufficient to cover the entire period of arrears and the period till the date of the decree.

4. The learned trial Judge was pleased to hold that the defendants were not the tenants in arrears of rent; that the defendants were ready and willing to pay the rent. The trial Court also held that the plaintiff did not require the suit premises for bonafide personal use and if the eviction were ordered a greater hardship would be caused to the defendants. As far as the standard rent is concerned, the learned trial Judge was pleased to fix the standard rent at Rs.220=00 per month (i.e. the agreed rent). The Court also held that the defendants were liable to pay the taxes as demanded. The Court, therefore, refused the decree for possession; however, passed decree in the sum of Rs.4,835=00 being the amount of arrears of rent including the taxes demanded.

5. Feeling aggrieved, the plaintiff preferred Regular Civil Appeal no.128/1983 in the District Court, Kheda. The said appeal was heard by the learned Assistant Judge, Kheda. The learned Judge, under the impugned judgment and decree dated 22nd March, 1984, was pleased to confirm the finding as regards the requirement of suit premises by the plaintiff for bonafide personal use i.e. the said contention was rejected by the learned Judge. The learned Judge, however, was of the opinion that the defendants had forfeited the protection conferred under the Rent Act by not depositing the interim rent regularly in the trial Court and the standard rent pending the appeal. The Court below, therefore, passed decree for possession in favour of the plaintiff.

6. Feeling aggrieved, the defendants have preferred the present Revision Application.

7. Mr.Amin has submitted that the Court below has committed material irregularity in recording a finding that the defendants were not ready and willing to pay the rent as envisaged under Section 12(1) of the Rent Act. The Court below has also erred in holding that the defendants were not entitled to protection conferred under Section 12(3)(b) of the Rent Act. Mr.Amin has submitted that the power to determine interim rent is conferred upon the Court under sub section (4) of Section 11 of the Rent Act. In the event tenant fails to deposit such interim standard rent fixed by the Court, the only consequence that should follow would be that the defendants may lose their right to defence. However, in the present case, the application to strike off the defence made by the plaintiff was disposed of by the trial Court and the defendants were also permitted to defend the suit. Thus, any default in payment of interim standard rent fixed by the Court had been regularized. No decree for possession could, therefore, have been passed on the basis of such default. He has further submitted that Section 12(1) of the Rent Act contemplates payment of standard rent and permitted increases. In case where there is a dispute as regards the standard rent of the concerned premises, the legislature has conferred an additional protection under Section 12(3)(b) of the Rent Act. Under the said clause (b) of sub section (3) of Section 12 a court is restrained from passing a decree for eviction where the tenant pays or tenders in Court the standard rent and permitted increases then due. This protection can be availed of only after the standard rent is fixed by the Court. In the present case, no standard rent was fixed by the Court until the date of the decree. The question of paying or tendering the standard rent to the Court before the date of the decree, therefore, should not arise. The defendants, therefore, can not be said to have committed any default in payment of standard rent pending the suit. Even, on the date of the decree when the standard rent was fixed by the Court, it was the duty of the Court to give some time to the defendants to pay or to tender the arrears of rent decreed. In the present case, the trial Court failed to determine such date. The defendants, therefore, can not be said to have failed to pay or to tender the decretal amount. Eventually the defendants can not be ordered eviction for default in payment of decretal amount, if any. No decree for possession could have been passed by the Court below against the

defendants.

In support of his submissions, Mr.Amin has relied upon the judgment of the Hon'ble Supreme Court in the matter of VORA ABBASBHAI ALIMAHOMED V/S. HAJI GULAMNABI HAJI SAFIBHAI [5 G.L.R. 55] and of this Court in the matter of RAMNIKLAL DWARKADAS MODI V/S. MOHANLAL LAXMICHAND & ORS. [18 G.L.R. 32 (FB)] and of NANIBEN D/o. DAYALBHAI MORARBHAI V/S. VIDHYABEN AMBALAL MISTRY [28(1) G.L.R. 353].

8. Mr.Desai has contested the Revision Application. He has submitted that admittedly the defendants had committed default in payment of interim standard rent pending the trial as well as in payment of decretal amount and the standard rent pending the appeal. Hence, the defendants can not be said to be ready and willing to pay the standard rent. The defendants have, thus, forfeited right to protection either under Section 12(1) of the Rent Act or Section 12(3)(b) of the Rent Act. In support of his contentions, Mr.Desai has relied upon the judgments of this Court in the matters of GAZNAFARALI FATEHALI HAKIM V/S. RATILAL MAGANLAL PANCHAL [1998(1) G.L.H. 490], of MRANALINI B.SHAH & ANR. V/S. BAPALAL MOHANLAL SHAH [19 G.L.R. 1090] and of CHHOTUBHAI ZINABHAI (SINCE DECD.) THROUGH HIS HEIRS & LRS. GUNVANTBHAI C.DESAI V/S. ISHVERSINH MOHANSINH ATODARIA [2000(1) G.L.R. 115].

9. In the matter of Vora Abbasbhai Alimahomed (supra), the Hon'ble Supreme Court had occasion to examine the scope and ambit of Sections 5(10)(b)(iv), 11 and 12 of the Rent Act. The Court was pleased to hold that "what the tenants have to pay or tender in Court to comply with the conditions of clause (b) of sub section (3) is standard rent and permitted increases, and the Court has under clause (b) of sub section (1) merely the power to fix the date of payment or tender, and not the rate at which the standard rent is to be paid. Power to fix the standard rent of premises is exercisable under Section 11(1) alone. To bring the claim within Section 12(3)(b) the tenant must pay or tender the standard rent and permitted increases on or before the first day of hearing, or on or before such other date as the Court fixes, and also costs of the suit as may be directed by the Court". The Court further held that, "if in an appeal filed against the decree, the standard rent is enhanced, the appeal Court may fix a date for payment of the difference, and if on or before that date the difference is paid, the requirement of Section 12(3)(b) would be complied with". As regards the payment of

interim rent is concerned, the Court observed that "compliance with an order for payment of interim rent is made by the Explanation to Section 12 conclusive evidence of the readiness and willingness to pay the standard rent, but that by itself is not a ground for holding that the interim rent which may be specified under sub section (3) of Section 11 is standard rent fixed under sub section (1) of Section 11".

10. In the matter of Ramniklal Dwarkadas Modi (supra) the question, "whether it is not sufficient to raise a dispute as to the standard rent within one month in reply to the notice or even prior to the date of such demand of rent, but it is necessary in either case also to make an application under Section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 within one month of the notice referred to in Section 12(2) of the Act in order to avoid a decree of eviction under Section 12(3)(a) of the Act", was referred to the Full Bench of this Court. The said question has been answered by the Full Bench in Paragraph 11 of the judgment. The Court has, inter alia, held that "the tenant can also claim protection from the operation of Section 12(3)(a) of the Act by raising a dispute as to the standard rent either prior to the notice under Section 12(2) of the Act or by reply to the notice but in this case the tenant must do so within one month from the receipt of the notice referred to in Section 12(2) of the Act".

11. In the matter of Naniben D/o.Dayalbhai Morarbhai (supra), this Court has held that "the trial Court was under an obligation to fix the date giving time to the tenant to deposit the standard rent..... similarly merely passing a decree for arrears of rent and costs would not amount to an order under Section 12(3)(b) .....fixing a date under Section 12(3)(b) would focus the attention of the tenant that if he does not comply with such express direction under Section 12(3)(b) he may incur liability to eviction".

12. In the matter of Gaznafarali Fatehali Hakim (supra), this Court has once again discussed the scope and ambit of Sections 11 and 12 of the Rent Act. The Court has held that "in absence of showing willingness to pay arrears within one month from the date of notice or filing of application of standard rent eviction decree must follow".

13. In the matter of Mranalini B.Shah (supra), the Hon'ble Supreme Court has held that condition, inter alia, thereafter continues to pay or tender in court

regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court mentioned in Section 12(3)(b) of the Rent Act is mandatory and not directory. Same is the view expressed by this Court in the matter of Chhotubhai Zinabhai (supra).

14. On the date of the suit notice the defendants were in arrears of rent for more than six months; in reply to the suit notice the defendants had raised dispute as regards the standard rent; pending the trial the trial Court had, on 12th February, 1980, fixed a monthly rent of Rs.200=00 as interim standard rent as envisaged in Section 11(4) of the Act; that before the first day of hearing the defendants had deposited the amount of arrears of rent as demanded in the plaint and also an additional sum which would cover the period till the date of the decree at the rate the interim standard rent fixed by the Court; that no time had been fixed by the trial Court for payment of decretal amount nor the appellate Court had issued any direction as regards the payment of decretal amount or the standard rent.

15. Mr.Amin has strenuously urged that since the Court failed to fix the time for payment of arrears of rent after fixing the standard rent, the defendants can not be deprived of the protection under Section 12(3)(b) of the Rent Act. He has further submitted that the explanation to Section 12 requires that once the standard rent is fixed by the Court the tenant is required to pay or tender the amount of rent or permitted increases as specified in the order made by the Court. Since no date was determined or no direction was issued to pay such standard rent fixed by the Court, the defendants were not required to pay or tender such standard rent. No decree for possession, therefore, could have been passed against the defendants.

16. I am unable to agree with the contentions raised by Mr.Amin. It is too tall a claim to say that unless the Court directs to pay or tender the standard rent regularly every month the tenant is not required to pay or tender such amount. All that the said explanation could mean is once the standard rent and permitted increases are fixed by the Court such should be the amount to be paid to the landlord every month as rent in place of the rent agreed. As observed by the Hon'ble Supreme Court in Vora Abbasbhai Alimahomed (supra) a tenant is required to pay or deposit the interim standard rent regularly in the Court so as to establish his readiness and willingness to pay the standard rent as

envisaged in Section 12(1) of the Rent Act. Further, it is well established that the appeal being continuation of the suit such regularity is required to be maintained even pending the appeal. As recorded hereinabove the defendants made as many as sixteen defaults in depositing the interim standard rent fixed by the Court i.e. the defendants failed to deposit the interim standard rent for the period commencing on 15th August, 1980 until 19th December, 1981. Though on 19th December, 1981 the defendants deposited a sum sufficient to cover the arrears as well as the period upto the decree, the defendants can not be said to have made such deposits regularly. Similarly, there is a further default in payment of standard rent and permitted increases fixed by the Court pending the appeal. Once the Court had fixed the standard rent and the permitted increases under Section 11(1) of the Act, it was the duty of the defendants to pay or deposit such amount regularly pending the appeal. Admittedly, this having not been done the defendants have forfeited their right to protection conferred under sub section (1) as well as sub section (3)(b) of Section 12 of the Rent Act. Such failure should entail a decree for possession in favour of the plaintiff. In the instant case, the Court below having passed decree for possession on the ground that the defendants failed to deposit the standard rent and the permitted increases regularly it is in consonance with the statutory provisions and the law laid down by the Hon'ble Supreme Court and this Court. The same does not warrant interference.

17. The Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

18. The learned advocate Mr.D.F.Amin states that the petitioners - defendants intend to challenge this order further. He, therefore, prays that the interim stay be extended for a further period of three months.

19. Request is granted. The interim stay operating pending the Revision Application shall stand extended upto 30th November, 2002 on the same terms and conditions.

(Ms. R.M. Doshit, J.)

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